THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.4308 of 2014 & 1166 of 2019

COMMON JUDGMENT:

Since both the appeals arise out of an Award dated 10.06.2013 passed in O.P.No.163 of 2008 by the Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar at Jagtial (for short, the Tribunal), they are being disposed of by this common judgment.

M.A.C.M.A.No.4308 OF 2014:

2. This appeal is filed by the appellant/insurance company challenging the fastening the liability on it to pay the compensation amount.

M.A.C.M.A.No.1166 OF 2019:

3. This appeal is filed by the appellants/claimants on the ground that the Tribunal awarded meager compensation of Rs.3,60,000/- against the claim of Rs.5,00,000/- for the death of Thummala Bheemaiah @ Bheemesh.

4. For the purpose of convenience, the parties are hereinafter referred to as they are arrayed in M.A.C.M.A.No.1166 of 2019.

5. Appellant No.1 is the wife, appellant No.2 is the son and respondent Nos.3 and 4 are the parents of the deceased, Thummala Bheemaiah @ Bheemesh, while respondent Nos.1 and 2 are owner and insurer of car bearing No.AP25P 3630.

6. The brief facts of the case are that the deceased was working as Driver with first respondent. While so, on 08.05.2008 at about 10.30 pm., while the deceased was driving car bearing No.AP25P 3630, and when the car reached near Kakatiya Dharmakanta, Jagtial Town, due to the focus lights, he lost control and dashed against an Eicher van. In the said accident, he sustained grievous injuries and died while undergoing treatment. The appellants filed the aforesaid OP claiming compensation of Rs.5,00,000/- for the death of the deceased.

7. Before the Tribunal, respondent No.1 filed counter denying the allegations and contended that the accident had occurred due to the negligent driving by the deceased and sought to dismiss the claim petition. Respondent No.2 filed separate counter stating that the deceased was not having valid driving license; that the deceased is not a third party within the meaning of the Motor Vehicles Act, 1988 (for short, the Act), as respondent No.1 did not pay any additional premium to cover the risk of the driver of the insured vehicle and therefore, the claimants are not entitled to claim compensation against the own insurance company and prayed to dismiss the claim petition.

8. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the deceased, but however, awarded total compensation of Rs.3,60,000/- under various heads, with interest at the rate of 7.5% per annum.

9. Sri Ramachandar Rao Vemuganti, learned counsel for the claimants/appellants, submits that in a proceeding under Section 163-A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation. He further submits that though respondent No.1 deposed that the monthly salary of the deceased was Rs.3,000/- and Rs.200/- per day as batta, the Tribunal wrongly took the income of the deceased at Rs.2,500/- per month. He further submits that as per Ex.A.4, post-mortem report, the age of the deceased is 24 and the appropriate multiplier for calculation of compensation is '18' as per **Smt.Sarla Varma Vs. Delhi Transport Corporation**[1], but the Tribunal wrongly adopted the multiplier '17'. Apart from that, the Tribunal ought to have deducted personal expenses of the deceased at 1/4th instead of 1/3rd, as he was having four dependants i.e., the appellants and respondent Nos.3 and 4. He further submits that the appellants are also entitled to addition of 40% on the income of the deceased towards future prospects and also Rs.70,000/- towards conventional charges, as per the ratio laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**[2]. He further submits that appellant No.2, being the minor son of the deceased, is entitled to Rs.50,000/- towards loss of parental consortium, as per the decision of the Hon'ble Supreme Court in **Magma General Insurance Co.Ltd. Vs.Nanu Ram Alias Chuhru Ram**[3]. Basing on the above submissions, he prays to enhance the compensation amount.

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[1] 2009(6) SCC 121
[2] 2017(6) ALD 170 (SC)
[3] 2018 Law Suit (SC) 904

10. Sri V.Sambasiva Rao, learned counsel for the insurance company, submits that to fasten the liability on the insurance company, the claimants are required to establish either that the deceased is a third party or that his risk is covered under the terms and conditions of the policy. As respondent No.1 did not pay any additional premium covering the risk of driver, the deceased is not entitled to any compensation and hence, the insurance company is not liable to pay any compensation. Basing on the above submissions, he seeks to set aside the Award of the Tribunal.

11. It is seen from the impugned Award that the Tribunal, by relying on para 10 of the judgment of the Hon'ble Supreme Court in **Oriental Insurance Co. Ltd. V. Meena Variyal**[4], came to the conclusion that though no additional premium was paid, the deceased is also covered under Ex.B.1 policy, since the status of the deceased as driver of respondent No.1 attracts the liability of respondent No.1 to pay the compensation to the deceased under the Workmen Compensation Act, which needs no interference and the finding of the Tribunal in that regard is confirmed.

12. Coming to the quantum of compensation, in view of evidence of respondent No.1, this Court is inclined to take the income of the deceased at Rs.3,000/ per month. Apart from the same, the appellants are entitled to addition of 40% towards future prospects, as per **Pranay Sethi**'s case (supra). Therefore, monthly income of the deceased comes to Rs.4,200/- (Rs.3,000/- + Rs.1,200/-), and after deduction of 1/4th as the dependants are four in number, the

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[4] 2007 ACJ 1284

annual income comes to Rs.38,256/- (Rs.3,188/- X 12). As the deceased was aged 24 years as per Ex.A.4, the appropriate multiplier is ‘18’. Hence, the compensation under the head ‘loss of dependency’ comes to Rs.6,88,608/- (Rs.38,256/- X 18). Apart from the same, the appellants are entitled to Rs.70,000/- towards conventional heads, as per **Pranay Sethi**’s case (supra). Appellant No.2, being the minor son, is entitled to Rs.50,000/- towards parental consortium and respondent Nos.3 and 4, being the parents, are entitled to Rs.40,000/- each towards filial consortium, as per **Nanu Ram Alias Chuhru Ram**’s case (supra). Therefore, the total compensation comes to Rs.8,88,608/- (Rs.6,88,608/- + Rs.70,000/- + Rs.50,000/- + Rs.80,000/-).

13. In the result, M.A.C.M.A.No.4308 of 2014 is dismissed and M.A.C.M.A.No.1166 of 2019 is allowed, enhancing the compensation amount awarded by the Tribunal from Rs.3,60,000/- to Rs.8,88,608/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the claimants claimed only Rs.5,00,000/-, they are directed to deposit deficit Court fee before the Tribunal. The appellants and respondent Nos.3 and 4 are entitled to the compensation as per the apportionment made by the Tribunal. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 02-01-2020
TJMR